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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re MICHAEL E., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. MICHAEL E., Defendant and Appellant.	A106782 (Solano County Super. Ct. No. J32996)

This appeal concerns a supplemental petition filed against Michael E. (the minor) on April 26, 2004—the latest of several supplemental petitions filed against the minor—alleging that he had committed first degree residential burglary by entering an inhabited dwelling with the intent to commit larceny or some other felony. (Pen. Code, § 459.) The juvenile court sustained the petition's allegations after a contested hearing, continued the minor as a ward of the court, committed him to the Fouts Springs Youth Facility with a maximum term of confinement of 128 months, and ordered him to pay restitution of $100.

Appellate counsel has asked this court for an independent review of the record to determine if it discloses the presence of any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) In accordance with *Anders v. California* (1967) 386 U.S. 738, 744, counsel refers to five points that might arguably support the appeal: (1) Whether the court

had jurisdiction to sustain the petition under Welfare and Institutions Code section 602[1] when the petition, although using the language of section 777, cited neither section 777 nor section 602; (2) whether the court erred in admitting into evidence the minor's statement to police when that statement was made after the minor had invoked his right to remain silent, (3) whether trial counsel was ineffective in failing to object to a field identification procedure; (4) whether the evidence was sufficient to sustain a finding of criminal intent when nothing was stolen from the house, and the effect of the corpus delicti rule on that evidence; and (5) whether the evidence was sufficient to sustain a finding that the minor entered the home.

EVIDENCE

On April 24, 2004, a burglar alarm went off in John Treganowen's home. Phillip Bensing, who had just arrived at a neighboring home, testified that he saw three males running, side by side, from the house. Mr. Bensing dropped off his wife to call the police, and drove after the three males. Mr. Bensing identified the minor as one of the three males, stating that the minor had been on the right, had short dark hair and had been wearing a white shirt and jeans. Mr. Bensing followed the three males to a nearby school. He drove around and around the school until the police arrived.

The police arrived and searched the schoolyard. They found several people there, including the minor and two companions. Mr. Bensing performed a field identification of the minor and his companions, telling the police that they were the three males he saw run from the house. The minor later told police that one of his companions—an adult—wanted to rob the house. They rang the victim's doorbell to see if anyone was at home. The adult then went through the gate while the minor and his other companion stood at the front of the driveway.

An investigation disclosed that a sliding glass door and master bedroom window of the house had been opened, and a screen removed from the window. The drawers of

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

dressers in the master bedroom had been opened, but it did not seem that anything of any value had been taken.

DISCUSSION

The minor was a ward of the court before the supplemental petition was filed, which means that proceedings for a change or modification of commitment could have been initiated by means of either a section 777 petition or a supplemental section 602 petition. (*In re Adrian R.* (2000) 85 Cal.App.4th 448, 454.) Although the supplemental petition did not specify that it was being filed under any particular section of the Welfare and Institutions Code, it fully notified the minor and his parent of the substance of the allegations against him, the possible responsibilities of the parents and the intention of the deputy district attorney to ask that the minor be continued as a ward of the court. It therefore provided the notice required by section 602. The minor's due process and statutory rights were protected, and the juvenile court, accordingly, had jurisdiction to sustain the petition.

The court did not err in admitting evidence of the minor's statement. The police advised the minor of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436, ascertained that he understood them, and refrained from questioning him after he told them he did not wish to speak. The minor later told an officer that he wished to tell his side of the story. The officer reminded the minor of his rights, taking his statement only after he indicated that he understood his rights and wished to waive them. The Supreme Court in *Edwards v. Arizona* (1981) 451 U.S. 477, 484-485, enunciated the rule that "an accused, . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." The evidence fully supports the conclusion that the minor initiated the communication that led to his statement, and that he spoke with full knowledge of his right to remain silent.

Defense counsel was not ineffective in failing to object to the field identification. The law favors field identification measures when in close proximity in time and place to

the scene of the crime. It is settled that the suggestiveness inherent in field identification procedures " 'is offset by the likelihood that a prompt identification within a short time after the commission of the crime will be more accurate than a belated identification days or weeks later. Furthermore, because the problem [of suggestiveness] is inherent in such confrontations, the choice is between prohibiting all in-the-field identifications or permitting them notwithstanding the element of suggestiveness. The choice involves a balancing of the interests of fairness to criminally accused persons and prompt, proper and efficient law enforcement, and the choice has properly been made to permit in-the-field identifications, because the immediate knowledge whether or not the correct person has been apprehended is of overriding importance and service to law enforcement, the public and the criminal suspect himself.' [Citations.]" (*In re Richard W.* (1979) 91 Cal.App.3d 960, 970.)

In any event, "[w]here the defendant claims the pretrial identification is unnecessarily suggestive, he must show it gave rise to a very substantial likelihood of misidentification. [Citation.]" (*In re Richard W.*, *supra,* 91 Cal.App.3d at p. 970.) Defense counsel could make no such showing here. The witness, Mr. Bensing, watched the minor and his companions for a period of time as they ran or walked to the schoolyard, and was able not only to describe the minor's appearance and clothing, but also his position as the one on the far right. He testified that the police had told him that he needed to make sure that he was identifying the correct people. Under the circumstances, any objection to the evidence would have been futile. The effective assistance of counsel does not require the making of futile or frivolous motions. (*People v. Memro* (1995) 11 Cal.4th 786, 834.)

Burglary is defined as the entry of specified structures, including an inhabited house, with an intent to commit grand or petit larceny or any felony. (Pen. Code, § 459.) There is no requirement that the larceny or other felony be completed. To the contrary, it is settled that the crime of burglary is complete when entry with necessary intent is made, whether or not the planned felony is committed. (*People v. Mitchell* (1966) 239 Cal.App.2d 318, 328.) The evidence was that a home was broken into, and that

dresser drawers within the home were opened. On this evidence, the court was entitled to infer that defendant or one or both of his companions broke into the residence with the intent of stealing something. As the inference is allowed whether or not the minor's statement is considered, the evidence is sufficient whether or not the corpus delicti rule precluded the juvenile court from considering the minor's statement.

That the minor was seen running from the victim's home, and that the victim's home had been entered, permits an inference that the minor himself entered the home. The court was not required to accept as true defendant's statement that he remained outside while one of his companions entered the home. In any event, and even accepting that the minor remained outside, the court was entitled to infer that he remained outside waiting for his companion and was acting lookout, as a means of aiding and abetting the crime.

We find, therefore, that none of the specific points identified by appellate counsel raises any arguable issues. We also find that the minor's due process rights were protected throughout the proceedings, that he was represented by competent counsel and that the dispositional order was warranted and authorized.

In sum, we have thoroughly reviewed the record and find no arguable issues. While we have selected certain matters for discussion, we have scrutinized the record in its entirety. There are no issues requiring further briefing.

The judgment is affirmed.

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STEIN, J.

We concur:

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MARCHIANO, P.J.

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MARGULIES, J.